Office. As regards Lot 12, he did not start proceedings until August, 1961.

This delay of over four and a half years clearly presents an insuperable obstacle barring any reference to the court. (See sub-sections (3) and (4) of section 18 of the Ordinance which was in force at the relevant time.) Can this obstacle be circumvented by a resort to an application for *mandamus?* In my view, it cannot because the application must rest strictly on the grounds which had been put forward and on no other. These grounds are two, namely:—

(a) that the applicant had had no opportunity of being heard;

(b) that no formal award had ever been made.

I have found that the first ground was untrue. As to the second, I do not think that the applicant should be allowed to blow hot and cold. He who had accepted compensation pursuant to an award is estopped from saying it was not an award. See judgment of Scrutton L.J. in *Verschures Creameries Ltd.* v. *Hull and Netherlands Steamship Co. Ltd.*,[2] which reads:—

"A plaintiff is not permitted to 'approbate and reprobate'. The phrase is apparently borrowed from the Scotch law, where it is used to express the principle embodied in our doctrine of election — namely, that no party can accept and reject the same instrument. . . . The doctrine of election is not however confined to instruments. A person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage. That is to approbate and reprobate the transaction."

This incidentally disposes of a point of law raised by counsel for the applicant that the collector in this case was not properly vested with authority to conduct the inquiry in respect of Lot 12.

For the above reasons I would dismiss the application with costs.

Application dismissed.

Solicitors: *Sault, Keith Sellar & Co.*

SHRIRO (CHINA) LTD. & ORS. v. THAI AIRWAYS INTERNATIONAL LTD.

[F.C. (Wee Chong Jin C.J. (Singapore), Tan Ah Tah F.J. and Chua J.) May 3, 1967]

[Singapore — Federal Court Civil Appeal No. Y29 of 1966]

Carriage by Air — International carriage — Successive carriers — Loss by theft — Air consignment note not containing full particulars — Reliance on Warsaw Convention relating to International Carriage by Air 1929, to exclude liability — French text — First schedule to the Carriage by Air Act, 1932, art. 8(i), 9.

Practice and Procedure — Meaning of words in foreign text — Duty of counsel — Expert evidence.

This was an appeal against the decision of Ambrose J. (reported in [1967] 1 M.L.J. 109), exempting the defendants, air carriers, from liability for loss of eight cases of watches consigned to the plaintiffs.

The defendants were carriers of the goods from Bangkok to Singapore. The goods were stolen while they were in the defendants' possession at the Singapore Airport. The air consignment note had only stated the weight of the goods. In a claim by the plaintiffs for damages for loss of the goods, the defendants contended that as the air consignment note had complied with the provisions of article 8(i) of the French text of the Warsaw Convention relating to International Carriage bv Air, 1929, they were entitled to rely on article 20 of the Convention to exempt themselves from liability. The plaintiffs argued that the consignment note had not stated either the volume or the dimensions of the goods, and it had therefore not complied with article 8(i) of the Convention as set out in the First Schedule to the Carriage by Air Act, 1932.

Held: (1) the only English translation of the Warsaw Convention which was properly before the court was that as set out in the First Schedule to the Carriage by Air Act, 1932. It was the duty of counsel who wished to submit that the meaning of words in a foreign language was ambiguous, to call expert evidence on the point. In the absence of such expert evidence, it was not open to the learned judge to decide that article 8(i) of the Convention was ambiguous;

(2) article 8(i) of the Convention provides that the air consignment note shall contain particulars of the weight, the quantity and the volume or dimensions of the goods. In this case, as only the weight of the goods was stated in the air consignment note, the note did not contain all the required particulars, and therefore, the defendants were not entitled to avail themselves of the provisions of the Convention which exclude or limit their liability.

Cases referred to:—

(1) *The Borneo Co. Ltd.* v. *Braathens South American & F. E. Air Transport A. S.*, [1960] M.L.J. 201.

(2) *Sellamani Ammal* v. *Thillai Ammal* (1946), L.R. 73 I.A. 264, 270; A.I.R. 1946 P.C. 185.

FEDERAL COURT.

G. S. Hill and *M. Karthigesu* for the appellants/plaintiffs.

J. Grimberg for the respondents/defendants.

Cur. Adv. Vult.

Tan Ah Tah F.J.: On the 7th September, 1962 eight cases containing watches were delivered to Air France by Sacom Pour Le Commerce D'Outre-Mer of Switzerland for carriage by air from Basle-Mulhouse to Singapore. The air waybill, which was the air consignment note, provided that the goods were to be carried by Air France from Basle-Mulhouse to Bangkok and by Japan Air Lines from Bangkok to Singapore.

In point of fact the watches were carried by the defendants, Thai Airways International Ltd., from Bangkok to Singapore. The gross weight of the consignment was 80.5 kilograms and the value of the watches was $53,142.97. The watches were stolen while in the defendants' possession at the airport in Singapore. The first plaintiffs had purchased them from the Swiss consignors and the second plaintiffs were the consignees.

The first and second plaintiffs sued the defendants claiming damages in respect of the loss of the watches. At the conclusion of the trial the learned judge gave judgment for the defendants with costs. It is against this judgment that this appeal is brought by the first and second plaintiffs.

It was agreed between the parties at the trial that the carriage was an international carriage within the meaning of the Convention relating to International Carriage by Air which was signed in Warsaw on the 12th October, 1929, that the carriage was to be performed by successive carriers, and that the position of the parties was to be determined by the terms of the original Warsaw Convention without regard to the amendments contained in the Protocol adopted by the international conference held at The Hague in 1955.

Some of the provisions of the Convention have the effect of excluding or limiting the defendants' liability. But the defendants were not entitled to avail themselves of these provisions if the air consignment note did not contain all the particulars set out in article 8(a) to (i) inclusive and (q). This is provided by article 9, which reads:—

"If the carrier accepts goods without an air consignment note having been made out, or if the air consignment note does not contain all the particulars set out in article 8(a) to (i) inclusive and (q), the carrier shall not be entitled to avail himself of the provisions of this Convention which exclude or limit his liability."

One of the issues in this case was whether the air consignment note contained the particulars required by article 8(i). This was referred to by the learned judge as the second issue and he dealt with it in the following manner:—

"The second issue was whether the air consignment note contained what was required by article 8(i). Counsel for the plaintiffs contended that article 8(i) required the air consignment note to contain the weight, the quantity and the volume or dimensions of the goods; that only the weight of the goods was stated in the air consignment note; that the air consignment note did not contain all the required particulars; and that therefore the defendants were not entitled to avail themselves of article 20(1). Counsel cited *The Borneo Co. Ltd.* v. *Braathens South American Transport & F.E. Air Transport A.S.*[1] There it was held that, because the air consignment note did not state either the volume or the dimensions of the goods, it did not contain all the particulars required by article 8(i).

Counsel for the defendants raised a point which did not appear to have been raised in the case cited by counsel for the plaintiffs. He contended that the French text of the Convention was the authoritative one. Article 36 of the Convention reads:—

'The Convention is drawn up in French in a single copy which shall remain deposited in the archives of the Ministry for Foreign Affairs of Poland and of which one duly certified copy shall be sent by the Polish Government to the Government of each of the High Contracting Parties.'

I accepted this contention. The French text of article 8 is to be found in *Shawcross & Beaumont* on Air Law, 2nd edition, at pages 566 and 567. It was not disputed that a literal translation of the French text of article 8(i) is as follows:—

'The air consignment note shall contain the following particulars:—

(i) the weight, the quantity, the volume or the dimensions of the goods.'

Counsel for the defendants went on to contend that the French text was ambiguous. I accepted this contention. In my view, the French text is not clear as to whether the air consignment note should contain only one of the four particulars or whether it should contain the first two particulars and either the third or the fourth. The text of the English translation of the Warsaw Convention in the First Schedule to the Carriage by Air Act, 1932, has removed the ambiguity by inserting the word 'and' immediately after the word 'quantity'. Without the insertion of the word 'and' the text is clearly ambiguous. As the consignors had complied with one of the two possible interpretations of the authoritative text of article 8(i), I took the view that they had complied with article 8(i)."

It is clear that the learned judge took into consideration the argument of counsel for the defendants regarding the meaning of the French text of the Convention without hearing expert evidence on the point. The correct practice in cases in which a question arises concerning the translation of documents which are not in the English language has been laid down more than once by the Privy Council. In *Sellamani Ammal* v. *Thillai Ammal*,[2] Lord Simonds said, at page 270:—

"Their Lordships would once more express the view . . . that it is not legitimate for the court to depart from the official translation except on expert evidence which the parties should have an opportunity of testing."

In the present case, the only English translation of the Convention which was properly before the court below is the one to be found in the First Schedule to the Carriage by Air Act, 1932. This translation is referred to in *McNair's* Law of the Air 3rd ed. at page 226 as the British statutory translation. In consequence of the passing of the Carriage by Air Act, 1932, the provisions of the Convention were given the force of law in the United Kingdom in relation to any carriage by air to which the Convention applied, irrespective of the nationality of the aircraft performing the carriage. By an Order in Council made in 1934, the provisions of sections 1 and 2 of the Act, subject to certain adaptations and modifications, and the Convention were extended to the Straits Settlements. This Order in Council has been replaced by another Order in Council made in 1953 which relates, *inter alia*, to Singapore.

In the circumstances of this case it seems to me to be unnecessary to arrive at a decision on the submission made by counsel for the defendants that the court should regard the French text of the Convention as being the one which was binding on the parties. Even if this submission is upheld, there was, as I have stated,

only one English translation which could properly be looked at and construed by the court.

It is the duty of counsel who wish to submit that the meaning of words in a foreign language is ambiguous or that a translation is incorrect to call expert evidence on the point. In the absence of such expert evidence in this case, it was, in my opinion, not open to the learned judge to decide that the French text of the Convention is ambiguous.

Article 8(i) of the Convention as set out in the First Schedule to the Carriage by Air Act, 1932 provides that the air consignment note shall contain particulars of the weight, the quantity and the volume or dimensions of the goods. In the present case, as only the weight of the goods was stated in the air consignment note, it is clear that the air consignment note did not contain all the required particulars. It follows therefore that the defendants were not entitled to avail themselves of the provisions of the Convention which exclude or limit their liability.

In view of the foregoing the appeal is allowed with costs here and below. There will be judgment for the first plaintiffs for the sum of $53,142.97.

Wee Chong Jin C.J. (Singapore) and Chua J. concurred.

Appeal allowed.

Solicitors: *Allen & Gledhill; Drew & Napier.*

YEE HUP TRANSPORT & CO. & ANOR. v. WONG KONG

[F.C. (Barakbah L.P., Azmi C.J. (Malaya) and Ong Hock Thye F.J.) May 3, 1967]

[Penang — Federal Court Civil Appeal No. X48 of 1966]

Damages — Personal injuries — Quarry contractor — Pecuniary loss — Assessment of — Loss of earning past and future — Quantum of damages.

Leg — ½" shortening of left leg — Limitation of flexion of knee.

This was an appeal on quantum of damages. The respondent, having been injured in a road accident, succeeded in obtaining an award of damages amounting to $26,916 in the High Court at Ipoh ([1966] 2 M.L.J. 234). The appellants' contention was that this award was excessive and based on erroneous principles.

The above sum was made up of: (a) 3 items of out-of-pocket expenses totalling $916; (b) loss of earnings for 42 months, from date of injury to trial of the action $8,400; (c) loss of prospective earnings $12,600; (d) damages for pain and suffering $5,000. No complaint was made against the items of special damage amounting to $916.

The respondent claimed that, until the temporary disablement, he was a quarry contractor, earning $300 per month. On the evidence the learned judge placed him in the category of a foreman who merely supervised the breaking of stones and their despatch to customers' work sites. He assessed the respondent's true monthly income at $200. It was also in evidence that the respondent was in fact physically disabled from pursuing his normal occupation for eleven months.

Held: (1) the general damages should not be awarded as though they were special damages properly pleaded and proved;

(2) taking into account the claimant's disablement, reduction of earning capacity, pain and suffering and loss of amenities the award will be reduced for actual loss of earnings from $8,400 to $2,000 and in lieu of the general damages, which came to a total of $17,600, the award will be reduced to the sum of $8,800.

Cases referred to:—

(1) *Ilkiw* v. *Samuels* [1963] 1 W.L.R. 991, applied.

(2) *The Wagon Mound* [1961] A.C. 388.

FEDERAL COURT.

R. Talalla for the appellants.

E. K. Yeap for the respondent.

Cur. Adv. Vult.

Ong Hock Thye F.J.: This is an appeal on quantum of damages. The respondent, having been injured in a road accident, succeeded in obtaining an award of damages amounting to $26,916 in the High Court at Ipoh. The appellant's contention is that this award is excessive and based on erroneous principles.

The above sum is made up of (a) 3 items of out-of-pocket expenses totalling $916; (b) loss of earnings for 42 months, from date of injury to trial of the action $8,400; (c) loss of prospective earnings $12,600; (d) damages for pain and suffering $5,000. No complaint is made against the items of special damage amounting to $916.

The respondent claimed that, until his temporary disablement, he was a quarry contractor, earning $300 per month. On the evidence the learned judge placed him in the category of a foreman who merely supervised the breaking of stones and their despatch to customers' work sites. He assessed the respondent's true monthly income at $200 which I think was realistic. The volume of his business was so inconsiderable that it was not worth while for him to keep any accounts or wages book. He was also dependent partially on his wife's small earnings as an odd job labourer bringing home about $80 per month. After his accident it was alleged that their 14 year-old son and 12 year-old daughter were compelled to leave school and seek employment in order to make up for the loss of the family bread-winner's income.

The respondent was 59 years-old when the trial took place; hence he was approximately 55 when he suffered the injury on September 5, 1962 He was on his back for 168 days in hospital while a compound fracture of the upper third of the left femur was mending. On the evidence his incapacity lasted 11 months altogether. Examination by the State Surgeon, Perak, in April 1964 revealed a slight limp by reason of a ½-inch shortening of the left leg and limitation